IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 21.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal Nos.2215, 2216 and 2230 of 2001

W.A. No.2215 of 2001:-

V.Venkatrajan ... Appellant

vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Housing
and Urban Development,
Fort St. George,
Chennai-600 009.

2. The Tamil Nadu Housing Board,
Rep. by its Chairman,
Nandanam, Chennai-600 035.

3. The Corporation of Madras,
Rep. by its Commissioner,
Rippon Buildings,
Chennai-600 003.

4. V.Ravichandran

5. Ra.Sa.Venkatesan (R-4 and R-5
impleaded vide order of this
court dated 20.09.2005 made in
WAMP Nos.3289 & 3290 of 2005) ... Respondents

W.A. No.2216 of 2001:-

1.V.Venkatrajan
2.V.Kanagarathinam
3.J.Rajini
4.V.Suseetha
5.D.Bhuvaneswari

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6.R.Prasanna
7.V.Kannan
8.V.Srinivasan
9.V.Uma ... Appellants

vs.

1. The Tamil Nadu Government
rep. by its Secretary,
Department of Housing
& Urban Development,
Fort St. George,
Madras 600 009.

2. The Land Acquisition Officer
cum Special Duty Collector
for Land Acquisition,
State Housing Board Scheme,
First Line Beach,
Madras-600 001.

3. The Tamil Nadu Housing Board,
rep. by its Chairman,
Nandanam, Madras-600 035.

4. The Commissioner,
Corporation of Madras,
Rippon Buildings,
Madras-600 003.

5. V.Ravichandran

6. Ra.Sa.Venkatesan (R5 & R6
impleaded vide order dated
20.9.05 made in WAMP
Nos.3289 & 3290/05). ... Respondents

W.A. No.2230 of 2001

V.Venkatrajan ... Appellant

vs.

1. M.Venkatachari

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2. The Corporation of madras,
Rep. by its Commissioner,
Rippon Buildings,
Chennai-600 003.

3. The Member Secretary,
MMDA, Thalamuthu Natarajan
Buildings,
Chennai-600 008.

4. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035. ... Respondents

Appeals against the Common Order passed by the learned single Judge (EPJ), dated 11.10.2001, made in W.P. Nos.15061/01, 2336/1996 and 15334 of 1995.

For Appellants : Mr.R.Karuppan
For Respondents/State : Mr.D.Krishnakumar,
Special Govt. Pleader.
For T.N.H.B. : Mr.D.Veerasekaran
For Madras Corporation : Mr.C.Ravichandran
For M.M.D.A. : Mr.N.Sampath

COMMON JUDGMENT

P.SATHASIVAM, J.

Since all the three Appeals arise out of the Common Order passed by the learned single Judge, dated 11.10.2001, made in W.P. Nos.15061 of 2001, 2336 of 1996 and 15334 of 1995, they are being disposed of by this Common Judgment.

2. W.P. No.15061 of 2005 was filed by V.Venkatrajan/appellant in W.A.No.2215 of 2001, praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order of the Secretary, Housing and Urban Development Department, Government of Tamil Nadu, culminated in the communication in letter dated 11.8.2000, quash the same and direct the Government to exempt or de-notify or to pass appropriate order, allowing the petitioner and members of his family to retain the land involved in land acquisition proceedings, bearing Plot No.A.29, Door No.13/1, First Avenue, Ashok Nagar, Madras-83, comprised in Town Survey No.5 Part, Block 56 of Kodambakkam Village (old Survey No.140/4) measuring about 14 grounds and 1076 sq. ft.

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W.P. No.2336 of 1996 was filed by V.Venkatrajan and 8 others/appellants in W.A. No.2216 of 2001, praying for the issuance of a writ of mandamus, forbearing the Secretary, Housing and Urban Development Department; Land Acquisition Officer; Chairman, Tamil Nadu Housing Board; and the Commissioner, Corporation of Chennai; from enforcing the land acquisition proceedings covered by the Notification under Section 4(1) of the Land Acquisition Act, published in the Government Gazette, dated 17.9.1958, and the Declaration under Section 6 of Act, published in the Government Gazette, dated 26.5.1965 and 1.5.1965, and to declare that the proceedings in relation to the land acquisition are void ab initio and non est in law.

W.P. No.15334 of 1995 was filed by M.Venkatachari/Respondent No.1 in W.A. No.2230 of 2001, praying for the issuance of a writ of mandamus directing the respondents therein viz., Commissioner, Corporation of Madras; Member Secretary, MMDA; and the Chairman, Tamil Nadu Housing Board; to maintain the land comprised in R.S. Nos.137/4, 144, 140, 140/4 and New T.S. No.5/1, Block 5, situate at No.A.29, First Avenue, Ashok Nagar, as park site earmarked in the Ashok Nagar Lay out plan and consequently forbearing the respondents from assigning or transferring or altering the said lands to third parties.

3. By the common impugned order, dated 11.10.2001, the learned Judge, after considering the rival contentions and perusing the records placed and in view of the Judgment of the Supreme Court rendered in respect of the dispute between the parties, viz., in Tamil Nadu Housing Board vs. A.Viswam (1996 (8) SCC 259), dismissed W.P. Nos.15061 of 2001 and 2336 of 1996 with costs. By the same order, the learned Judge allowed W.P. No.15334 of 1995 and ordered the official respondents to dispossess the petitioners or persons claiming through them in respect of the acquired land by use of force and form a Park, which is to be maintained by the Corporation. Questioning the said Common Order, the unsuccessful Writ Petitioners filed the above appeals.

4. Heard Mr.R.Karuppan, learned counsel for the appellants; Mr.D.Krishnakumar, learned Special Government Pleader for the State; Mr.D.Veerasekaran, learned counsel for the Tamil Nadu Housing Board; Mr.C.Ravichandran for Corporation of Chennai; and Mr.N.Sampath for M.M.D.A.

5. After taking us through the earlier acquisition/civil proceedings and the common impugned order of the learned Judge, Mr.R.Karuppan, learned counsel for the appellants, at the foremost, contended that the learned Judge exceeded his jurisdiction in taking up all the three petitions together. In any event, according

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to him, the learned Judge committed an error in hearing W.P. No.15334 of 1995, which is a P.I.L. (Public Interest Litigation) for formation and creation of a Park on the premise that the appellants' lands have been acquired for the purpose of creation of a Park and that it was not carried out. Coming to the merits, Mr.Karuppan vehemently contended that the entire acquisition proceedings are null and void and that the learned Judge committed an error in holding that the Judgment of the Supreme Court in 1996 (8) SCC 259 (cited supra) foreclosed the issue. He further contended that in the absence of proper counter affidavit filed by the official respondents, the learned Judge is not justified in dismissing the Writ Petitions filed by the land owners. In any event, according to him, the learned Judge failed to see that the purpose of acquisition being no longer in existence, it would render the lands acquired to be divested back to the respective owners.

6. On the other hand, Mr.C.Ravichandran, learned counsel appearing for the Corporation, projecting the case of the respondents, equally contended that the Writ Petitions filed by the appellants, questioning the acquisition proceedings initiated, after 30 years are not maintainable and, rightly, their case was negatived by the learned Judge. Further, according to him, in view of the decision of the Supreme Court reported in 1996 (8) SCC 259, the appellants cannot be permitted to contend that they are still in possession of the acquired land. It is also contended that the Government, only after being satisfied that there is no ground for accepting the case of the land owners under Section 48-B of the Land Acquisition Act, rightly rejected the representation of the petitioners. Looking at any angle, according to him, absolutely there is no ground for interference at this point of time. Learned counsel appearing for the respondents have also placed relevant records for consideration by this Court.

7. We have considered all the materials and the rival contentions.

8. Coming to the first contention relating to joint disposal of all the three writ petitions, which include P.I.L., by the learned single Judge, the reason given by the learned Judge in paragraph No.8 of the Common order is relevant, which reads as under:-

> " 8. On the joint request of the learned counsel for either side, all the three writ petitions were ordered to be consolidated by the orders of the Honourable The Chief Justice and they have been listed together. "

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Thus, it is clear that only on the request of the counsel appearing for all the parties, the writ petitions were ordered to be heard together by the Hon'ble The Chief Justice, and pursuant to the same, the learned Judge heard all the three Writ Petitions. In such circumstances, we do not find any merit in the contention raised by the learned counsel for the appellants.

9. Coming to the merits of the contention relating to land acquisition, according to the appellants/writ petitioners, they are joint owners of the property measuring 14.5 grounds, comprised in Plot No.A29, First Avenue, Ashok Nagar, Madras83. According to them, the said land originally belonged to one Appavoo Mudaliar and Nataraja Mudaliar, who are brothers. It is further seen that A.Viswam, father of appellants-1 and 3 to 9 in W.A. NO.2216 of 2001, was working as a Manager under the above said Mudaliar Brothers for a considerable period. It is also their case that the acquired land was given away by the Mudaliar Brothers by way of oral gift during the year 1950 to the said A.Viswam. Viswam was put in possession and constructed a Mangalore tiled house with brick walls, living there with his wife and children viz., the above mentioned appellants. According to them, only during 1965, Viswam was served with a notice to submit his objections if any or claim for passing an Award under Section 11 of the Land Acquisition Act in respect of the acquisition proceedings. During his life time, the said Viswam did not challenge the Acquisition Proceedings.

10. Though it was stated that no counter was filed before the learned Judge, a verification of the records shows that on behalf of the the Secretary, Housing and Urban Development Department, Government of Tamil Nadu; and Land Acquisition Officer cum Special Deputy Collector; the Deputy Secretary to Government, Housing and Urban Development Department, filed a detailed counter affidavit in W.P. No.2336 of 1996. It is seen from the counter affidavit that Notification under Section 4(1) of the Land Acquisition Act, 1984 (Central Act 1 of 1894) was published on 17.09.1958, acquiring an extent of 339 acres of land comprised in Kodambakkam Pudur Village in Part I Neighbourhood scheme and later named as 'Ashok Nagar Scheme' of Chennai City for planned development. Declaration under Section 6 of the Act was published on 26.11.1958. An extent measuring 1.32 acres of land in S. No.140/4 (now T.S.No.5/1) of Kodambakkam Village was acquired in Award No.2 of 1966 by the Land Acquisition Officer for the above scheme, which was set apart for Park in the Scheme. Though the proceedings after Section 4(1) Notification were quashed by this Court on the ground that dispensation of Section-5A enquiry by invoking the urgency clause is not warranted, subsequently, after conducting enquiry under Section-5A of the Land Acquisition Act and

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after passing fresh declaration under Section-6, Award was made on 28.02.1966 and possession had also been taken on 28.02.1966 and delivered to the Housing Board on 21.3.1966. It is also seen that the land in question in Survey No.140/4, part of Kodambakkam village, now reassigned as T.S.No.5/1 of Block No.56 of Kodambakkam Village, was originally earmarked as Park area for Ashok Nagar Scheme of Tamil Nadu Housing Board as per the approved layout of Director of Town and Country Planning. It is specifically stated that the Tamil Nadu Housing Board is the absolute owner since 21.3.1966 after taking possession of the land from the Land Acquisition Officer. It is also seen that the scheme framed by the Housing Board was approved and the scheme provided for 3636 residential flats.

11. It is further seen from the materials placed that the said Viswam encroached upon the site, therefore, the Housing Board took steps to evict him. At that stage, he approached the City Civil Court by filing O.S. No.3375 of 1984. Though the suit was dismissed, he obtained a decree in A.S. No.60 of 1985. Second Appeal filed by the Housing Board in S.A. No.1526 of 1998 on the file of the High Court was dismissed on 07.04.1994. Aggrieved by the judgment and decree of the High Court, the Housing Board moved the Supreme Court by filing S.L.P. No.3770 of 1995, which was allowed on 09.02.1996, holding that, Viswam and his legal heirs being trespassers, they cannot claim injunction against the lawful owners nor can the court could grant such relief. The said decision of the Supreme Court is reported in 1996 (8) SCC 259 (cited supra). The Hon'ble Supreme Court, after referring to all the details including the Scheme framed by the Government, acquisition proceedings, viz., Section-4(1) Notification; Section-6 Declaration; passing of award; and possession taken by the Housing Board; set aside the judgment and decree of the lower appellate court as well as the High Court and restored the decree of the trial court. The following conclusion in paragraph Nos.11, 12 and 13 is relevant,

> " 11. From the facts in this case, it would be clear that possession must have been taken of the land consisting of 339 acres including 1.33 acres in Survey No.140/4. It is seen that when the land was acquired for planned development of the city and a large chunk of buildings has already been built up and the land admeasuring about 1 acre 32 cents has been set apart for park purpose, obviously along with other lands, the disputed land was taken possession of and construction was made as per plans. Would it be possible for the appellant, without delivery of possession to the Housing Board, to construct

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such massive constructions and leave out only this part of the land bearing Survey No.140/4 which was set apart for public purpose, namely, public amenity of park? The making of the plan would emerge only after land is taken possession of and demarcation thereof is made and constructions are carried out. It is erroneous to believe that possession still remained with the respondents and the LAO had not taken possession only of this piece of land. It is not the case of the respondent that he resisted taking possession of the land by LAO and thereafter the LAO took no action to have him dispossessed. The Single Judge has not adverted to these material facts and the circumstantial evidence available from the established facts. He proceeded to consider on the premise that since the acquired land was not used for building purpose and possession was not taken, acquisition stood lapsed. Equally erroneous is the reasoning given by the District Judge. The High Court is wholly illegal in its conclusion. The District Judge proceeded on the premise that the revenue records do not show the name of the appellant mutated and the land was not registered in the name of the appellant. These circumstances are wholly illegal and unjustified. Section 11(4) read with Section 51 of the Act itself exempts registration of the land acquired under the Act. The District Judge had obviously ignored the statutory provisions. It was unnecessary for the Housing Board to have the lands mutated in the revenue records and have its name entered therein. It was not for its purpose. It was for public purpose, i.e., for construction of the houses and allotment thereof to the needy persons. After the construction of the houses, the public park stood vested in the acquisition. Obviously, at this stage, the Municipality would have come to take possession exercising its jurisdiction when illegal encroachment was found on the land. At this stage, notice was given to the respondents and the respondents filed the suit for perpetual injunction.

12. Thus considered, the title of the land in Survey No.140/4 having been vested in the appellant, to whomsoever it belonged earlier, it

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> stood divested from him/them and no one can lay any claim to the said acquired land once over and claim injunction on that basis. The injunction, therefore, cannot be issued against the true owner, namely, the Housing Board in whom the land ultimately stood vested and then stood transferred to the Municipal Corporation. A trespasser cannot claim injunction against the owner nor can the court issue the same.
>
> 13. Thus considered, we are of the view that grave error of law was committed by the High Court in confirming the decree of the appellate court. Accordingly, the decrees and judgments of the first appellate court and the High Court stand set aside and that of the trial Judge stands restored."

12. It is clear from the above Judgement of the Supreme Court that the title of the land in Survey No.140/4 vests with the Tamil Nadu Housing Board. The Hon'ble Supreme Court concluded that the trial Judge is perfectly right in dismissing the suit filed by Viswam and that the lower appellate court and the High Court committed an error in granting the decree, after noting the fact that the lands in question were taken over by the Government and handed over to the Housing Board for implementation of the Scheme as stated in the Notification under Section-4(1) of the Act.

13. Though Mr.R.Karuppan argued that even before the Supreme Court correct details were not furnished and hence, the said Judgment cannot be relied upon, we are unable to accept the said contention. The decision of the Supreme Court as well as the stand taken by the Government in the counter affidavit in W.P. No.2336 of 1996 and other records would amply show that, after following the procedure as provided under the Act, award was passed on 28.2.1966 and possession was also taken on 28.2.1966. The Writ Petitions have been filed nearly after 30 years. In such circumstances, we are of the view that the appellants/petitioners cannot be permitted either to canvass the acquisition proceedings or question the order of the Hon'ble Supreme Court.

14. As said earlier, the appellants/writ petitioners are legal representatives of A.Viswam, who participated in the Award Enquiry. During his life time, he did not challenge the validity of the acquisition proceedings, instead, he requested the Housing Board to allot him a plot in the scheme area as a displaced person. The particulars furnished by the Housing Board show that, considering the request of Viswam, on 29.04.1981, he was allotted a plot measuring 880 sq. ft. in A.P.1187 in K.K. Nagar Scheme, which

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is a neighbourhood scheme of Ashok Nagar Scheme. In fact, the allottee, viz., Selvam, also deposited Rs.2,174/- being the initial deposit and put up a house on the said plot. The said aspect has not been disputed by the petitioners, who are none else than his legal representatives. The Writ Petitions were rightly dismissed not only on the ground of laches and delay but also on the ground that the parties submitted themselves to the acquisition proceedings and accepted a plot allotted by the Housing Board as requested by their father A.Viswam, who had been displaced by the acquisition proceedings.

(emphasis supplied)

15. Coming to the rejection order passed in a petition under Section 48-B of the Act, as rightly observed by the learned Judge, after acquisition, if the land is not required for the purpose for which it was acquired, the Government may transfer such land to the original owner who is willing to repay the amount paid to him. We have already referred to the fact that after completion of the acquisition proceedings in accordance with the provisions of the Act and the rules made thereunder, possession was handed over to the Housing Board at the first instance, and, thereafter, the Housing Board handed over the said land to the Corporation of Madras as per the Scheme for developing the same as park. In such circumstances, it cannot be claimed that the land still vests with the Government and that it could have considered the claim under Section 48-B. This aspect was also considered by the learned single Judge and the claim of the appellants/petitioners was rightly rejected.

16. Finally, though a faint argument was advanced that maintenance of park is not part of the Scheme, the records show that the land in question, viz., S. No.140/4 part of Kodambakkam village, now reassigned as T.S.No.5/1 of Block No.56 of Kodambakkam village, has been earmarked as Park area under Ashok Nagar Scheme of Tamil Nadu Housing Board as per the approved layout of the Director of Town and Country Planning, in such circumstances, the said contention is liable to be rejected.

17. Though Mr.R.Karuppan, learned counsel appearing for the appellants referred to several decisions, questioning the acquisition proceedings; the stand taken by the Government, Housing Board and the Corporation of Chennai; and the Order of the Supreme Court; in the light of the factual details as discussed by the learned Judge in the common impugned order, we are of the view that those decisions are not helpful to the cases on hand, hence, there is no need to refer to the same. Further, as said earlier, in view of the fact that the Writ Petitions have been filed after 30 years of the initiation of the acquisition proceedings and that the petitioners' father A.Viswam participated in the enquiry and award

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and at his request, a plot in the same area was allotted to him as a displaced person and in view of the factual finding of the Supreme Court in 1996 (8) SCC 259 to the effect that the petitioners are trespassers, we are of the considered view that no further indulgence need be shown to them.

18. In such circumstances, we do not find any merit in these appeals, on the other hand, we are in entire agreement with the conclusion arrived at by the learned Judge. Consequently, all the Writ Appeals are dismissed. No costs.

19. In view of the dismissal of the appeals, the official respondents are free to implement the direction issued in para No.57 of the Common order, dated 11.10.2001, in the Writ Petitions, passed by the learned Judge.

JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary, to the Government of Tamil Nadu,
   Department of Housing
   and Urban Development, Fort St. George, Chennai-600 009.

2. The Chairman, The Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

3. The Commissioner, The Corporation of Madras,
Rippon Buildings, Chennai-600 003.

4. The Member Secretary, MMDA,
   Thalamuthu Natarajan Buildings, Chennai-8.

5. The Land Acquisition Officer cum Special Duty Collector
   for Land Acquisition, State Housing Board Scheme,
   First Line Beach, Madras-600 001.

+ 1 cc to Mr. R. Karuppan, Advocate SR No.20418
+ 3 ccs to Mr.C. Ravichandran, Advocate SR Nos.20460 to 20469
+ 1 cc to Mr.S. Rajasekar, Advocate SR No.20300
+ 1 cc to Government Pleader SR No.20397

MAB(CO)
SR/24.4.2006

Common Judgment in Writ Appeal Nos.2215, 2216 & 2230/01

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